

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4294 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GAGUBHA JARUBHA ZALA

Versus

DIRECTOR

Appearance:

MR RK MISHRA for Petitioner
MR DA BAMBHANIA for Respondent No. 1
SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/10/97

ORAL JUDGEMENT

RULE. Mr.D.A.Bambhania, Additional Government Pleader and Solicitor waives service of Rule for the respondent. On the request of the parties, this matter is take up for final hearing today.

2. The petitioner, who was an ex-serviceman, while serving as Welfare Organizer in the Department of Ex Servicemen Welfare and Rehabilitation was charged with the offences punishable under Sections 7, 12 and 13 (1) read with Section 13 (2) of the Prevention of Corruption Act, 1988. Pending inquiry and trial, the petitioner was placed under suspension by an order dated 1st June 1994. The petitioner has been acquitted by the judgment of the Special Judge, Jamnagar dated 18th February 1997. The grievance of the petitioner is that, in spite of the fact that he has been acquitted, he has not been reinstated.

3. Mr.R.K.Mishra, learned Counsel appearing for the petitioner submits that the petitioner was suspended under Rule 5 (1) (b) of the Gujarat Civil Services (Discipline and Appeals) Rules, 1971 (hereinafter referred to Rule of 1971). He submits that, after conclusion of the trial, the petitioner's continuous suspension under Rule 5 (1) (B) is illegal. He places reliance on a Division Bench judgment of this court in the case of STATE OF GUJARAT v. B.C.DWIVEDI reported in 1983 (2) Gujarat Law Reporter page 1315. In the said judgment, the Division Bench took the view that a suspension under Rule 5 comes to an end on non-existence of the contingency provided in Clauses (a) & (b) of Rule 5 (1) of the Rules of 1971. The court also held that the trial would mean all proceedings including sentence, that is to say, the trial concludes with the judgment of acquittal or conviction. Their Lordships while considering legality of the order passed by the learned single Judge whereby reinstatement of the petitioner was ordered on his acquittal by the competent court, held that the learned single Judge was justified in directing reinstatement as the contingency provided under Clause (b) of Rule 5 (1) ceased to exist.

4. In the case of STATE OF PUNJAB v. AJAIB SINGH reported in AIR 1995 Supreme Court 975, the Apex Court in an appeal against acquittal in a murder case deprecated reinstatement of the accused, a Police Inspector, simply because he was being acquitted by the trial court. The court observed :

"In our opinion, the Government would have been well advised to adopt the sealed cover procedure, a firmly established and well known practice in service law. Murder by a police officer is provocative. The trial of the officer and conduct of the Government both are in public glare. It is not the competency or efficiency of the officer but his conduct and behaviour and

approach of the Government towards such officer which is measured in social scale. Such unwarranted actions of the Government shakes the confidence of common man in the system. He loses faith in it when a person who is standing trial in appeal is promoted."

5. In UNION OF INDIA v. BIHARILAL SIDHANA reported in 1997 (4) Supreme Court Cases 385, the Apex Court held that acquittal does not entitle to automatic reinstatement because disciplinary action can be taken even after acquittal. The Court observed :

"It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules or under the Temporary Service Rules."

6. In CORPORATION OF THE CITY OF NAGPUR, CIVIL LINES, NAGPUR v. RAMCHANDRA reported in 1981 (2) Supreme Court Cases 714, the Apex Court observed that, normally where the accused is acquitted honourably and completely exonerated of the charges, it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. On the facts of the case it was found that in spite of the fact that quite some time had elapsed since the departmental inquiry had commenced, the Court directed that the concerned authority should take into consideration if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the accused - respondents. The court made it clear that if the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly to do.

7. Mr.Mishra, learned Counsel has also invited my attention to the Government notification referred to in the aforesaid Division Bench judgment of this court, that is, Government Resolution dated April 13, 1970 and an earlier Government Circular dated 6.4.1965.

8. From the aforesaid discussion it emerges that, simply because the accused has been acquitted, reinstatement is not automatic. However, in case departmental inquiry is already pending, the concerned authority is required to take a decision as to whether it is expedient to continue with the departmental inquiry or not and, in case there is no departmental inquiry pending, the concerned authority should take a decision if the facts of the case call for initiation of fresh departmental inquiry. The authority must give fresh look to entire matter and see whether in spite of acquittal there are sufficient reasons to believe that the conduct of the delinquent is such which may disentitle him to continue in service; or ultimately a decision may be possible to inflict a lesser punishment than dismissal. Thus, there must be special recorded reasons for refusing reinstatement. In case of pendency of appeal or revision against acquittal, appropriate order may be made making it subject to review on decision in appeal or revision against acquittal. Similarly, in case of conviction, dismissal is not automatic. The authority is required to consider if the employee is being convicted for an offence involving moral turpitude, or his conduct is such which disentitles him to continue in service. If offence is such that employee may be entitled to benefit under Section 360 Cr.P.C., it would be a relevant consideration. What is essentially required is firstly and on the top human approach without any compromise to discipline. Secondly, the promptness and thirdly the employee is given fair opportunity to represent his case for limited purpose in case authority intends to take decision against him. Thus, the moment the order of acquittal is recorded and is produced by the party, it is obligatory on the part of the concerned authorities to act promptly and take decision as to whether a fresh departmental inquiry is to be instituted or, if any inquiry already pending, the same is required to be continued. A further decision is also required to be taken whether it is expedient to place the accused under suspension or continue under suspension pending departmental inquiry.

9. In the present case, in spite of the fact that the judgment of acquittal has been recorded as back as on 18th February 1997, no decision has yet been taken. Thus, though the petitioner is not entitled for reinstatement automatically, but he is entitled to appropriate directions from this court to take a decision as to whether the department wants to initiate any departmental proceeding against the petitioner.

10. In view of the aforesaid, this Special Civil Application is partly allowed and respondent No.1 is directed to take a decision -

- (a) as to whether it is expedient to initiate departmental inquiry against the petitioner;
- (b) as to whether it is expedient to continue the petitioner under suspension during disciplinary proceeding;
- (c) in case no decision is taken by the respondent within a period of two months from the date of receipt of the Writ the petitioner shall stand reinstated.

Rule is made absolute to the aforesaid extent.

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